

HAROLD H. BLOCK

IBLA 83-461

Decided July 12, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 68686 through A MC 68688, A MC 68692 through A MC 68694.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year after the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford

claimants any relief from the statutory consequences.

APPEARANCES: Anita I. Swigart, trustee for Block Family Trust.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harold H. Block <sup>1/</sup> appeals from the decision of the Arizona State Office, Bureau of Land Management (BLM), dated February 15, 1983, which declared the unpatented Buck Haven, Rand, Revenue, Buck Saw, Buck Trail, and Buck Skin lode mining claims, A MC 68686 through A MC 68688 and A MC 68692 through A MC 68694, abandoned and void for failure to file on or before December 30, 1981, evidence of annual assessment work or a notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant states the 1981 assessment work was performed by the family of Harold H. Block. An affidavit of labor was prepared and given to Mr. Block to sign and have recorded in Yavapai County, Arizona, and with BLM. Unfortunately, Mr. Block was seriously ill and becoming mentally incapacitated, so he did not have the 1981 proof of labor recorded either in Yavapai County or with BLM. The family was not aware of the failure to record until BLM returned the 1982 proof of labor with the decision declaring the claims abandoned and void.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located before October 21, 1976, must file a copy of the location notice and evidence of performance of assessment work or a notice of intention to hold the claim with the proper office of BLM by October 22, 1979, and a proof of labor or a notice of intention to hold the claim on or before December 30 of every calendar year after recording the notice of location with BLM. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2] With respect to the conclusive presumption of abandonment and the argument that the intent not to abandon was manifest, we stated in Lynn Keith, *supra*:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or

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<sup>1/</sup> Appellant, Harold H. Block died Mar. 25, 1983. The appeal is being pursued by Anita I. Swigart, his daughter, as trustee for the Block Family Trust.

decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97; 88 I.D. 371-72.

It is unfortunate that the claimant was mentally incapacitated but the responsibility for complying with the recordation requirements of FLPMA rested with him or his agent.

The trustee may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

R. W. Mullen  
Administrative Judge

Will A. Irwin  
Administrative Judge